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IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 9971 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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BHIKHABHAI @ KAKO SHANKARBHAI RAJPUT

Versus

COMMISSIONER OF POLICE

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Appearance:

MS DR KACHHAVAH for Petitioner

MR KT DAVE, AGP, for Respondent No. 1, 2, 3

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CORAM : MR.JUSTICE A.L.DAVE

Date of decision: 27/03/2000

ORAL JUDGEMENT

1. The Commissioner of Police, Baroda City, Baroda, passed an order on October 2, 1999, in exercise of powers under Section 3(1) of the Gujarat Prevention of Anti-Social Activities Act, 1985 ("PASA Act" for short), detaining the petitioner-Bhikhabhai @ Kako Shankarbhai

Rajput, under the provisions of the said Act.

2. The detaining authority took into consideration four offences registered against the detenu under the Bombay Prohibition Act, besides statements of three anonymous witnesses recorded on August 9, 11 and 13, 1999. The detaining authority came to conclusion that the detenu is a bootlegger and is required to be detained under the PASA Act in order to immediately prevent him from pursuing his illegal and anti-social activities. The authority observed that resorting to less drastic remedy is not possible and may not prove to be so efficacious as detention under the PASA Act.

3. The petitioner/detenu challenges the order of detention on various counts. However, Ms. Kachhavah, learned advocate for the petitioner, has restricted her arguments to the ground of delay in passing the order. She submitted that the statements of anonymous witnesses were recorded by the proposing authority on August 9, 11 and 13, 1999. The statements were verified by the detaining authority on September 3, 1999 and the order is passed on October 2, 1999. Ms. Kachhavah, therefore, submitted that there is a delay of one month from the date of verification by the detaining authority. The delay is not explained. The delay, having remained unexplained, would vitiate the genuineness of the satisfaction recorded by the detaining authority for the need for exercise of these powers. She, therefore, submitted that the petition may be allowed.

4. Mr. K.T. Dave, learned Assistant Government Pleader, has opposed this petition.

5. It is clear, on perusal of the record that the statements of anonymous witnesses were recorded on August 9, 11 and 13, 1999. The said statements were verified by the detaining authority on September 3, 1999 and the order was passed on October 2, 1999. Even if the date of verification is considered, the order is passed after a lapse of about one month. This unexplained lapse/delay in passing the order will have a direct bearing on the genuineness of the subjective satisfaction recorded by the detaining authority for the need for exercise of powers under the PASA Act. The authority has observed in the grounds of detention that the petitioner is required to be detained under the PASA Act for immediately preventing him from pursuing his activities which are detrimental to public order. The outcome is that the order is passed on a subjective satisfaction which cannot be said to be genuine, but only verbal. If the

satisfaction was genuine, there would not have been so much of delay in passing the order and in absence of any explanation coming from the detaining authority by way of an affidavit or otherwise, no concession can be given for the delay. The delay has vitiated the order of detention and, therefore, the petition deserves to be allowed.

6. In view of the above discussion, the petition is allowed. The impugned order of detention dated October 2, 1999 passed against the detenu is hereby quashed. The detenu-Bhikhabhai @ Kako Shankarbhai Rajput is ordered to be released forthwith, if not required in any other matter. Rule is made absolute with no orders as to costs.

[ A.L. DAVE, J. ]

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